IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

MFA.No. 611 of 2002()

AGAINST THE ORDER DATED 08/11/2000 IN M.V. IN OP.851/1996 of ADDL. DISTRICT COURT, THODUPUZHA

.....

APPELLANT: PETITIONER

JOSEPH, S/O.VARGHESE,
KOCHUPURACKAL HOUSE, KARUNAPURAM KARA AND VILLAGE.

BY ADV. SRI.MATHEW JOHN (K)
SRI.BABY THOMAS

RESPONDENTS: RESPONDENTS

----

1. C.A.AHAMMED KUNJU,
S/O.HAJI M.,ABDUL REHMAN RAWTHERS,
BLOCK NO.671, KARUNAPURAM, CHERUKOPATHALI HOUSE,
KALLAR PATTOM COLONY, RAMAKKALMEDU P.O.

2. THE NEW INDIA ASSURANCE CO LTD.,
DIVISIONAL OFFICE, KOTTAYAM.

BY ADV. SMT.P.K.SANTHAMMA
SRI.E.R.VENKATESWARAN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 20/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

==========

M.F.A. NO. 611 OF 2002

==========

Dated this the 20th day of June, 2007

J U D G M E N T

Petitioner in O.P(MV) No.851 of 1995 on the file of the Motor Accidents claims Tribunal, Thodupuzha is the appellant. Petitioner sustained injuries in a road traffic accident occurred on 30.8.1995. He filed the O.P. claiming compensation impleading the owner, driver and Insurer of the vehicle. Owner and driver remained ex parte. Insurer alone contested the case. It was admitted that the vehicle was covered by a valid policy of insurance at the time of accident. But the quantum of compensation claimed was disputed. The averment that the accident occurred due to the negligence of the driver was also disputed. It was contended that the accident occurred was an inevitable one.

2. Tribunal found that the accident occurred due to the negligence of the driver of the Jeep involved in the accident. It was also found that the petitioner is entitled to get a compensation of Rs.47,750/- and directed the Insurer to pay that amount. Petitioner has filed this appeal contending that

the compensation awarded by the Tribunal is highly inadequate.

3. The findings regarding negligence and liability of the Insurer have become final and conclusive. Smt. Santhamma, learned counsel appearing for the Insurer, has strenuously argued before me that even if this Court finds that the petitioner is entitled to get any additional compensation, the same has to be paid by the owner-cum-driver of the vehicle. It is argued that the petitioner was travelling in a private Jeep. It is also argued that the policy issued was an act only policy and the Insurer shall not be saddled with any liability.

4. Before the Tribunal it was admitted that the vehicle was covered with a valid policy of insurance. No contention was raised by the Insurer that since the petitioner was a passenger in a private vehicle, Insurer was not liable. No contention was raised that the policy issued was an act only policy. Tribunal found that the Insurer was liable and directed it to pay the compensation awarded. That finding has become final and conclusive. So the contention now raised by the

counsel for the Insurer that the Insurer is not liable to pay the compensation awarded is barred by the principle of res judicata. The Insurer cannot be allowed to raise such a contention. The Insurer is liable to pay the compensation, if any, awarded in this appeal also.

5. Now I shall consider whether the appellant is entitled to get any additional compensation. Initially petitioner was admitted in the hospital on 30.8.1995 and discharged on 5.9.1995. He was again admitted in the Public Health Centre at Santhanpara on 5.9.1995 and discharged on 20.10.1995. Medical evidence shows that petitioner sustained injuries of tenderness and oedema over cervical spine. X-ray revealed Art chip fracture of C4 and tenderness over left hip. Exhibit A10 disability certificate issued by the Holy Family Medical Centre, Vazhathop shows that petitioner has low backache and was undergoing treatment there. The certificate also shows that the petitioner is having approximately 40% disability. The Doctor who had issued the disability certificate was not the Doctor who treated the petitioner. He was not examined also. So the Tribunal rejected Exhibit A10 and

awarded a sum of Rs.10,000/- towards compensation for disability and loss of earning power.

6. It may not be possible to hold that the disability sustained by the petitioner will come to 40. I am of the view that the Tribunal should have fixed 10% as his disability and fixed compensation accordingly. In this case compensation towards disability itself comes to more than Rs.43,200/- which can be rounded to Rs.45,000/-. After deducting Rs.10,000/- already awarded by the Tribunal on that count, petitioner is entitled to get Rs.35,000/- as additional compensation which will carry interest at the rate of 7%.

In the result, the appeal is allowed is part. An award is passed in favour of the appellant to recover an additional compensation of Rs.35,000/- with 7% interest from the date of petition till date of realisation. Second respondent-Insurer is directed to deposit that amount also. On deposit, the appellant can withdraw the whole amount.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

==========

M.F.A. NO.611 OF 2002

==========

J U D G M E N T

20TH JUNE, 2007